Supreme Court, U.S.
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No. 96-1199

In The

Supreme Court of the United States

October Term, 1996

ANDREW J. MULLER, A MINOR CHILD,
BY HIS PARENTS AND NEXT FRIENDS,
RONALD G. MULLER AND ANN H. MULLER,

Petitioners,

v.

JEFFERSON LIGHTHOUSE SCHOOL, STEVEN MILEY,
IN HIS OFFICIAL CAPACITY AS PRINCIPAL
OF JEFFERSON LIGHTHOUSE SCHOOL,
AND RACINE UNIFIED SCHOOL DISTRICT,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GILBERT J. BERTHELSEN
TERRANCE L. KALLENBACH
(*Counsel of Record*)
LINDA S. ISNARD
CAPWELL AND BERTHELSEN
601 Lake Avenue
P. O. Box 247
Racine, WI 53401-0247
(414) 637-1266
Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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STATEMENT OF THE CASE

Andrew Muller, his parents Ronald Muller and Ann Muller, petitioners, make assertions in their **STATEMENT OF THE CASE** that Andrew was not permitted to distribute non-school sponsored literature because it was religious in nature. (Petition for Writ of Certiorari, p. 3.) This is not true. Neither the United States District Court for the Eastern District of Wisconsin nor the United States Court of Appeals for the Seventh Circuit made such a finding.[1],[2] Petitioners' assertion that Andrew was denied First Amendment rights based upon religious grounds is not even germane to a determination by this Court on the

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[1] Andrew was told by his teacher to ask Principal Miley for permission to distribute the flier. Andrew claims he was denied permission to distribute the flier because it was religious in nature. This is disputed by Principal Miley. Principal Miley maintains Andrew wished to distribute the flier to his entire class. Principal Miley maintains he told Andrew that because the materials were not school supported or directly related to school program he could not pass the fliers out to his class. It was, however, permissible for Andrew to pass the information out to specific friends.

[2] Also in dispute is whether petitioners followed respondents' complaint procedures. Racine Unified School District's Code of Student Responsibilities and Rights are given to each student at the beginning of the year. The Code contains a formal complaint procedure and a formal Complaint form. This is available to the students and their parents if they wish to complain about actions taken in a school regarding the student. Ann Muller, Andrew's mother, maintains she made a formal complaint to Principal Miley pursuant to the procedures outlined in the Code. As noted by the Seventh Circuit Court of Appeals in its decision (Petition for Writ of Certiorari, App. A-5-6) petitioners did not file the official complaint with Racine Unified School District.

Petition for Writ of Certiorari. The only issue presented by the decision of the Seventh Circuit is whether certain policies of the Board of Education of Racine Unified School District are valid under the First Amendment to the United States Constitution.

Racine Unified School District is a public school district operating 35 schools of which 23 are elementary schools. Andrew Muller, at the time this controversy arose, was a fourth grade student in Jefferson Lighthouse School – one of the elementary schools operated by Racine Unified School District. Steven Miley was the principal of Jefferson Lighthouse School.

On January 19, 1995, Andrew wished to distribute invitations to an Awana Club program to be held at a local Racine, Wisconsin church. The invitation was a preprinted form which Andrew signed, but the invitation directed any invitee who had questions to the Awana Club commander, Rick DeYoung. (App. A-1.)

The Board of Education for the Racine Unified School District had in place, before Andrew sought to distribute the flier, policies setting forth procedures by which students could distribute non-school sponsored publications and hand bills within schools. Those policies (Sections 6144.11 and 6144.12, School Board Policy) are set forth in their entirety in the Petition for Writ of Certiorari, App. C-1-2. Policies 6144.11 and 6144.12 generally provide that non-school sponsored publications and hand bills may be distributed within a school provided: (1) the material includes the name of the sponsoring organization or individuals; (2) the time and place for distribution is cooperatively set with the principal of the school; (3) that a copy

of the material is given to the principal at least 24 hours before distribution; (4) the material contain a disclaimer that "the opinions expressed are not necessarily those of the school district or its personnel;" and (5) that the principal may prohibit the distribution or stop the distribution once started if it was found the materials contain libelous or obscene language, include language that would incite persons to illegal acts, would be insulting to any group or individual, or that the principal can reasonably forecast the distribution will greatly disrupt or materially interfere with school procedures. (Petition for Writ of Certiorari, App. C-1-2; Policy 6144.11.)

The policies also provide that written permission is to be obtained from either the school principal or the Superintendent before distributing or displaying non-school sponsored materials. (Petition for Writ of Certiorari, App. C-1-2; Policy 6144.12.)

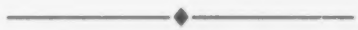
In the event a principal prohibits or stops a distribution, the principal must state the reasons for his or her decision. (Petition for Writ of Certiorari, App. C-1-2; Policy 6144.11, e.)

It is against this background that both the District Court and the Seventh Circuit Court of Appeals made decisions. Petitioners demanded in their Complaint that the District Court declare Policies 6144.11 and 6144.12 (which were incorporated into the Code of Student Responsibilities and Rights) unconstitutional and that respondents be enjoined from enforcing the policies in a manner which would prohibit Andrew Muller from distributing the Awana fliers during non-instructional times.

The District Court granted petitioners a permanent injunction enjoining the respondents from preventing Andrew from distributing the materials "solely on the grounds that they are religious in nature, or that they are unrelated to school programs or not supported by the school", but found, with one exception, all of Racine Unified School District Policies 6144.11 and 6144.12 were constitutional. (Decision and Order, Petition for Writ of Certiorari, App. B-12-13.) The only provision the District Court found unconstitutional was Policy 6144.11, d., which required non-school sponsored publications or hand bills to contain a disclaimer that "the opinions expressed are not necessarily those of the school district or its personnel."

Petitioners appealed the District Court's decision to the Seventh Circuit Court of Appeals. The substance of the appeal was Policies 6144.11 and 6144.12 violated Andrew Muller's rights of free speech, freedom of religion, and rights under the Establishment Clause of the First Amendment. Respondents cross-appealed the District Court's determination that the disclaimer provision of Policy 6144.11 was an unreasonable restriction of Andrew's rights under the First Amendment.

The Seventh Circuit Court of Appeals held that Policies 6144.11 and 6144.12 in their entirety, were constitutional, and consequently, did not deny Andrew Muller any of his rights under the First Amendment. (Seventh Circuit Decision, Petition for Writ of Certiorari, App. A-1, et seq.) The Mullers now petition this Court for a Writ of Certiorari.



ARGUMENT

I.

THERE ARE NO COMPELLING REASONS FOR THE COURT TO REVIEW THIS CASE.

Petitioners try to broaden the issue decided by the Seventh Circuit by reference to "District-wide" policies. (See: questions 3 and 4 of **QUESTIONS PRESENTED FOR REVIEW**, Petition for Writ of Certiorari.) The decision of the Seventh Circuit Court of Appeals limits its application to elementary school students.

Respondents do not concede nor do respondents intend to suggest the Seventh Circuit Court of Appeals decision should have been different if Andrew Muller had been a junior high or high school student. Nevertheless, the Seventh Circuit Court of Appeals took Andrew Muller as he was presented – a fourth grade student in a public elementary school. The Seventh Circuit neither considered, nor does this case present facts which permit the consideration of the applicability of Racine Unified School District Board of Education Policies 6144.11 and 6144.12 to anyone other than an elementary school student.

Petitioners argue this Court should issue a Writ of Certiorari and review this matter because the decision of the Seventh Circuit conflicts with precedent of this Court, as well as with precedent of other federal courts. Petitioners advance this argument by making the outlandish claim that the Seventh Circuit majority opinion "held that the First Amendment did not extend to elementary students." (Petition for Writ of Certiorari, p. 12.) That is not

true. The Seventh Circuit majority questioned if elementary school students held the full bundle of rights articulated in *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 89 S. Ct. 733, 21 L.Ed.2d 731 (1969). Even if they did, those rights are subject to the later decisions in *Bethel School District 403 v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159, 92 L.Ed.2d 549 (1986) and *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562, 98 L.Ed.2d 592 (1988). (Seventh Circuit Decision, Petition for Writ of Certiorari, App. A-19.) It is this latter authority, *Fraser* and *Hazelwood*, that the Seventh Circuit followed in making its decision.

The Seventh Circuit's decision that Policies 6144.11 and 6144.12 were constitutional as applied to Andrew Muller began with an analysis of what rights students have to distribute non-school sponsored literature in elementary schools. Without denying elementary school students have such rights, the Seventh Circuit held school authorities may reasonably regulate the distribution of non-school sponsored literature in elementary schools and Policies 6144.11 and 6144.12 were reasonable. The Seventh Circuit reached this conclusion by determining elementary schools were non-public fora and subject to the "reasonableness" standard elaborated in *Hazelwood*.

The Seventh Circuit's decision follows and is consistent with Supreme Court precedent. It does not conflict with other holdings of the United States Courts of Appeals, and properly recognizes the need to balance the rights of elementary school students with the role of the community and educators in operating schools. This case does not present any compelling reasons for review as

required by SCR 10. For these reasons the Petition for Writ of Certiorari should be denied.

II.

THE SEVENTH CIRCUIT'S DECISION FOLLOWS AND IS CONSISTENT WITH SUPREME COURT PRECEDENT.

A. The Seventh Circuit's Forum Analysis Is Mandated By Supreme Court Decisions.

The Seventh Circuit held Jefferson Lighthouse School is a non-public forum. As such, school authorities may reasonably regulate and restrict the distribution of non-school sponsored literature within the school.

The Seventh Circuit's forum analysis was based upon and is consistent with decisions of this Court. In *Hazelwood* this Court noted public schools do not possess all of the attributes of streets, parks or other traditional public forums. School facilities are deemed public forums only if school authorities open the schools for indiscriminate public use. If school facilities have been reserved for their intended purpose, no public forum is created and school officials may impose reasonable restrictions upon the speech of students, teachers and other members of the school community. *Id.*, 484 U.S. at 267.

The forum analysis used by the Seventh Circuit is also supported by this Court's decision in *Perry Education Association v. Perry Local Educators Association*, 460 U.S. 37, 103 S. Ct. 948, 74 L.Ed.2d 794 (1983). This Court, following a forum analysis, concluded the mailbox system of a public school was not a public forum, and consequently

school authorities could reasonably restrict access to the mailboxes. *Id.*, 460 U.S. at 49.

More recently, in *Lambs Chapel v. Center Moriches School District*, 508 U.S. 384, 113 S. Ct. 2141, 124 L.Ed.2d 352 (1993), this Court approved a forum analysis in determining whether a governmental owner could properly restrict the use of its facilities for the use to which the property is dedicated. The Court noted that control over access to a non-public forum can be based on both subject matter and speaker identity so long as the distinctions drawn are reasonable. *Id.*, 113 S. Ct. at 2146-2147.

Albeit in a non-public school setting, this Court in *United States v. Kokinda*, 497 U.S. 720, 110 S. Ct. 3115, 111 L.Ed.2d 571 (1990) held a governmental authority (United States post office) could impose reasonable restrictions on individuals who wished to use the facilities for public speech. *Id.*, 497 U.S. at 725-727.

The Seventh Circuit's application of a forum analysis and its conclusion that Jefferson Lighthouse School is a non-public forum follows and is consistent with the foregoing authority.

B. The Seventh Circuit's Conclusion That Policies 6144.11 And 6144.12 Are Reasonable Prior Restraints Is Consistent With Supreme Court Precedent.

The Seventh Circuit, in concluding Jefferson Lighthouse School was a non-public forum, held respondents can reasonably regulate and restrict the distribution of non-school sponsored literature within elementary schools. In so holding, the Seventh Circuit determined Policies 6144.11 and 6144.12 were constitutionally valid prior restraints insofar as they required students to presubmit any literature to the principal at least 24 hours in advance of distribution. Contrary to petitioners' claim, this determination is supported by Supreme Court precedent.

This Court, in *Hazelwood*, affirmed school authorities' right to review and approve a student newspaper before distribution. In *Ginsberg v. New York*, 390 U.S. 629, 88 S. Ct. 1274, 20 L.Ed.2d 195 (1968), this Court upheld a statute banning the sale of sexually oriented material to minors. As noted by the Seventh Circuit, this was an act of prior restraint. (Seventh Circuit Decision, Petition for Writ of Certiorari, App. A-21.)

The Seventh Circuit, relying upon Supreme Court precedent, expounded upon the reasons why the presubmission of materials to be distributed in elementary schools is an appropriate restriction. Prior restraint is an important tool in preserving a proper education environment. School authorities, as recognized in *Fraser*, can properly protect minors from exposure to vulgar and offensive language. It is reasonable for school authorities

to intercept racially and religiously bigoted materials before they damage children in the school environment. The Seventh Circuit concluded school authorities have no practical way to protect students from materials that can disrupt the educational environment or severely traumatize a child without some form of prior restraint. (Seventh Circuit Decision, Petition for Writ of Certiorari, App. A-21.)

Petitioners also challenge both the policies of the respondents, as well as the decision of the Seventh Circuit on the grounds the policies do not provide sufficient procedural safeguards and the policies fail to provide a definite time limit within which the school authority may grant or deny permission to distribute materials. This Court has, however, held that only unreasonable restrictions are prohibited in a non-public forum. *Perry Education Association, Id.*, 460 U.S. at 46; *Cornelius v. NAACP Legal Defense & Education Fund*, 473 U.S. 788, 808-811, 105 S. Ct. 3439, 87 L.Ed.2d 567 (1985). Policy 6144.11, c., requires students to submit materials at least 24 hours in advance of distribution. The Seventh Circuit concluded this was a reasonable restriction in light of the school authority's legitimate interest in evaluating materials to be distributed. The Seventh Circuit's decision is not contrary to any Supreme Court decision, and is in fact consistent with *Hazelwood*.

C. The Seventh Circuit's Decision That Policies 6144.11 And 6144.12 Are Valid Content Based Restrictions Is Consistent With Supreme Court Precedent.

Petitioners argue Policies 6144.11 and 6144.12 are unconstitutional content and viewpoint based restrictions. Petitioners claim the Seventh Circuit affirmation of the policies is in conflict with a number of Supreme Court opinions, namely, *R.A.V. v. City of St. Paul*, 505 U.S. 377, 112 S. Ct. 2538, 120 L.Ed.2d 305 (1992); *Simon & Schuster v. New York Crime Victims Board*, 502 U.S. 105, 112 S. Ct. 501, 116 L.Ed.2d 476 (1991); *Forsyth County v. The Nationalist Movement*, 505 U.S. 123, 112 S. Ct. 2395, 120 L.Ed.2d 101 (1992); *Boos v. Barry*, 485 U.S. 312, 108 S. Ct. 1157, 99 L.Ed.2d 333 (1988); *Madsen v. Woman's Health Center, Inc.*, 512 U.S. 753, 114 S. Ct. 2516, 129 L.Ed.2d 593 (1994); and *Tinker*.

The only case cited by petitioners that addresses the rights of public school students and the rights of school authorities to regulate student speech is *Tinker*. Conversely, *R.A.V. v. City of St. Paul*, addresses a cross burning incident allegedly in violation of a municipal ordinance banning bias motivated disorderly conduct. *Simon and Schuster* considered New York's "Son of Sam" law requiring perpetrators of crimes to pay book sale proceeds to victims. *Forsyth* considered an ordinance requiring permits for demonstrations. *Boos* considered an ordinance regulating conduct in the vicinity of foreign embassies. *Madsen* considered the effect of an injunction on anti-abortion protesters. These cases do not address schools, students or the issue decided by the Seventh

Circuit in this case. They do not apply in the context of the facts presented here.

Contrary to petitioners' argument, what school authorities may or may not do in the regulation of the distribution of non-school sponsored literature within a school is to be determined based upon a forum analysis. School authorities may, in a non-public forum such as Jefferson Elementary School, regulate the content of non-school sponsored literature. Even under *Tinker* school authorities were permitted the right to regulate the content of student speech if it would materially disrupt the school or invade the rights of others.

The policies in question permit respondents to either prohibit distribution or to stop the distribution (if already started) of any material that is libelous, obscene, may incite persons to illegal acts, is insulting to a group or individual, or will greatly disrupt or materially interfere with school procedures. (Petition for Writ of Certiorari, App. C-1; Policy 6144.11, e.)

The Seventh Circuit properly noted that if school authorities can suppress speech to protect fourteen year olds from sexual innuendo (*Fraser*) and if they can delete entire pages of a school newspaper because they touch upon sensitive matters (*Hazelwood*), it follows that a public elementary school can shield its students from topics and viewpoints that would harm their emotional, moral, social and intellectual development. (Petition for Writ of Certiorari, App. A-15-16.) The Seventh Circuit's decision is consistent with both *Fraser* and *Hazelwood*.

D. The Seventh Circuit's Decision That Policies 6144.11 And 6144.12 Are Valid Time And Place Restrictions Is Consistent With And Follows Supreme Court Precedent.

Petitioners argue the Seventh Circuit decision in finding respondent's policies constitutional insofar as they require students to cooperatively set a time and place for distribution of non-school sponsored literature with the school principal is in conflict with other authority. Again, the Seventh Circuit's decision is based upon the forum analysis mandated in *Hazelwood* and *Perry Education Association*. Jefferson Lighthouse School is a non-public forum. School authorities can impose reasonable restrictions with respect to the distribution of non-school sponsored literature. The policies in question require students to schedule, cooperatively with the principal, the time and place for distribution.

Not only is the Seventh Circuit's decision in affirming these policies consistent with Supreme Court precedent, as noted by the Seventh Circuit it "makes eminent sense." (Petition for Writ of Certiorari, App. A-26.) It is difficult to imagine a school environment as petitioners seemingly want. This is particularly true in an elementary school setting. Petitioners argue students, on their own and without consultation with school authorities, can determine when and where they will distribute non-school sponsored literature so long as it does not take place during an instructional time. School authorities would be powerless to act until after distribution began, regardless of the hazards or dangers presented.

Not even *Tinker*, the touchstone upon which petitioners make their arguments, is so expansive. *Tinker* teaches that the First Amendment rights are available to students and teachers, consistent with the special characteristics of a school environment. *Id.*, 393 U.S. at 506. *Tinker* also permits school authorities to restrict and regulate speech in circumstances in which it can be shown the expression will substantially and materially interfere with the operation of the school or the rights of others. *Id.*, 393 U.S. at 509. *Tinker* is limited, however, by later decisions in *Hazelwood*, *Fraser*, and *Perry* all of which mandate a forum analysis and permit school authorities to impose reasonable restrictions on the right of expression consistent with the educational purposes of a school.

Contrary to petitioners' argument, *Tinker* is also limited to the age or school level to which it applies. Again, respondents do not concede that Policies 6144.11 and 6144.12 are inappropriate restrictions as to junior high or high school students. Nonetheless, the Seventh Circuit indicated age was a critical factor in determining what type of regulations could be imposed. Petitioners argue *Tinker* considered the rights of elementary school students. (Petition for Writ of Certiorari, p. 8.) Petitioners rely upon the dissent of Mr. Justice Black wherein it was noted an eight year old second grader and an eleven year old fifth grader were among those who defied the school's directive that black arm bands not be worn. *Id.*, 393 U.S. at 516. The majority opinion, delivered by Mr. Justice Fortas, was restricted to the rights of a thirteen year old junior high school student, and one fifteen year

old and one sixteen year old high school student. Petitioners' suggestions that *Tinker* considered elementary school students is wrong.

III.

THE SEVENTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH ANY OTHER CIRCUIT COURTS OF APPEALS OPINIONS.

Petitioners' claim that the decision of the majority of the Seventh Circuit conflicts with other Court of Appeals decisions. The Seventh Circuit Court of Appeals considered this case in the context of the distribution of non-school sponsored literature in elementary schools. The Seventh Circuit expressly noted that neither petitioners' nor respondents', nor the Seventh Circuit's own research, revealed any decision of other Courts of Appeals which applied *Tinker*-based rights in an elementary school setting. (Petition for Writ of Certiorari, App. A-15.) Petitioners do not now point out such authority.

Petitioners assert *Berger v. Rensselaer*, 982 F.2d 1160 (7th Cir. 1993) is at odds with the Seventh Circuit's decision in this case. *Berger* is a case turning upon the Establishment Clause of the First Amendment. Petitioners' appeal in the Seventh Circuit did address the Establishment Clause, but they do not do so in the Petition for Writ of Certiorari. (See: **QUESTIONS PRESENTED FOR REVIEW**, Petition for Writ of Certiorari.) *Berger* is inapplicable.

Petitioners' reliance upon *Chandler v. McMinnville School District*, 978 F.2d 524 (9th Cir. 1992) is also misplaced. Contrary to petitioners' assertions (Petition for

Writ of Certiorari, p. 17), *Chandler* would permit school authorities to suppress vulgar, lewd, obscene and plainly offensive language even when expressed during non-instructional time. *Id.*, 978 F.2d at 529. *Chandler* also permits school authorities to disassociate from non-school sponsored literature. *Id.*, 978 F.2d at 529. Hence, the Seventh Circuit's determination that the requirement in Policy 6144.11 that literature contain a disclaimer that the "opinions expressed are not necessarily those of the school district" is constitutional is supported by *Chandler*.

Petitioners also argue the Seventh Circuit decision conflicts with *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988). *Burch* considered a school authority regulation requiring the prior review of non-school sponsored literature in a high school setting. The Seventh Circuit decision limits itself to the facts presented – the right of prior review in an elementary school setting. The Seventh Circuit decision is not, therefore, at odds with *Burch*.

Petitioners reliance upon *Fujishima v. Board of Education*, 460 F.2d 1355 (7th Cir. 1972) is also misplaced. *Fujishima* was decided by the Seventh Circuit in 1972. The decision by the Seventh Circuit in this case relies upon *Hazelwood* which was decided after *Fujishima*. Moreover, the decision in this case relies upon *Hedges v. Wauconda Community School District*, 9 F.3d 1295 (7th Cir. 1993). The Seventh Circuit in *Hedges* adopted a forum analysis in considering the First Amendment rights of junior high school students. The Seventh Circuit concluded in *Hedges* that a junior high school was a non-public forum. *Fujishima* is made inapplicable by *Hazelwood* and *Hedges*.

Petitioners encounter the same problems with respect to their reliance upon *Riseman v. School Committee*, 439 F.2d 148 (1st Cir. 1971); *Eisner v. Stamford Board of Education*, 440 F.2d 803 (2nd Cir. 1971); *Quarterman v. Byrd*, 453 F.2d 54 (4th Cir. 1971); *Baughman v. Board of Education*, 478 F.2d 1345 (4th Cir. 1973); *Nitzberg v. Parks*, 525 F.2d 378 (4th Cir. 1975). All of these cases were decided before *Hazelwood*, and for that matter before *Perry Education Association*, *Kokinda*, and *Cornelius*. These decisions do not properly address school authorities rights to restrict speech in a non-public forum elementary school.

Indeed, petitioners do cite District Court cases decided after *Hazelwood* that may be at odds with the Seventh Circuit decision in this case. (See: *Johnston-Loehner v. O'Brien*, 859 F. Supp. 575 (N.D. Fla. 1994)). These cases do not present any conflict between Courts of Appeals. Although the Middle District Court of the State of Florida or the District Court of any other circuit might be at odds with the Seventh Circuit Court of Appeals should not warrant the issuance of a Writ of Certiorari in this case.

It may be, as the law develops, that other Courts of Appeals might accept or reject the Seventh Circuit's decision with respect to the First Amendment rights of elementary school students. Until such time as the law develops in this area, the issuance of a Writ of Certiorari is not warranted and would be premature.

IV.

THE SEVENTH CIRCUIT'S DECISION PROPERLY BALANCES THE FIRST AMENDMENT RIGHTS OF STUDENTS WITH THE NEED OF SCHOOL AUTHORITIES TO MAINTAIN ORDER AND DISCIPLINE.

Student communication is important. No less important are school activities involving classroom instruction and extracurricular activities, all of which are intended to lead to the inculcation of the skills, learning and discipline necessary for students to become good citizens. If public schools are to teach students to become good citizens, they must begin with the ability to maintain order and discipline consistent with a teaching environment. This is best accomplished at the local level through parents, boards of education elected by parents, and administrators and teachers employed by boards of education. The judicial treatment of schools, whereby the discretion and supervising authority of teachers and administrators is limited, is wrong. Respondents ought be permitted to do the job they have been elected and employed, and are best qualified to do without unnecessary interference by the courts.

The foregoing approach is well-founded in principles adopted by this Court. In *Fraser* the Court respected the needs for schools to teach shared values. It was noted teachers and older students demonstrate, by way of example, the appropriate form of debate and political expression both in and out of class. *Id.*, 478 U.S. at 681-682. This Court reiterated in *Hazelwood* that First Amendment rights of students are not automatically coextensive with the rights of adults in other settings. A school need not tolerate expression that is inconsistent

with its educational mission even if it could not otherwise censor similar speech outside of the school. *Id.*, 484 U.S. at 267.

Policies 6144.11 and 6144.12 of the Board of Education of Racine Unified School District are reasonable. They afford Andrew Muller the right to distribute non-school sponsored literature while at the same time affording respondents the ability to protect other students from materials which can result in serious harm or damage. The Seventh Circuit Court of Appeals decision balances Andrew Muller's rights with those of other students and the need for school authorities to maintain order and discipline consistent with the educational purpose of schools. The Seventh Circuit Court of Appeals decision adequately protects Andrew Muller and other similarly situated students. There is no need for this Court to issue a Writ of Certiorari and review the Seventh Circuit Court of Appeals decision.

V.

CONCLUSION

For the reasons set forth the respondents, Jefferson Lighthouse School, Steven Miley as principal of Jefferson Lighthouse School and Racine Unified School District respectfully request this Court deny petitioners' Petition for Writ of Certiorari to review the Judgment and Opinion of the Seventh Circuit Court of Appeals.

Respectfully submitted,

GILBERT J. BERTHELSEN
TERRANCE L. KALLENBACH
(*Counsel of Record*)
LINDA S. ISNARD
CAPWELL AND BERTHELSEN
601 Lake Avenue
P. O. Box 247
Racine, WI 53401-0247
(414) 637-1266
Counsel for Respondents

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Awana Clubs

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1st Evangelical Free Church, 2401 Virginia St., Racine, WI 53405
(414) 554-8880 (office, daytime) or 554-1070 (church building)

You are invited to Awana, a non-denominational youth program hosted at the 1st Evengelical Free Church. Clubs run for youth from three years old through the eighth grade every Wednesday night during the school year, except for school holidays. We hope you join us soon!

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Awana is divided into three sections - game time, handbook time, and council time.

Games are run in groups with an emphasis on teamwork and sportsmanship.

Handbook time revolves around memorizing verses from the Bible and learning more about God's word.

In council time clubbers learn more about people of character in the Bible.

Registration and games start at 6:15. Club officially starts at 6:30 and ends at 8:00.

Parents are always welcome to stay and watch.

If you have questions or concerns, please contact Awana Commander Rick DeYoung at 878-9747. He will be pleased to assist you in any way.

Invited by Andy Miller 634-1524

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